

CITY COUNCIL REPORT



Meeting Date: March 1, 2016
 General Plan Element: *Provide for the orderly administration of the affairs of the City*
 General Plan Goal: *Fiscal Management*

ACTION

Request: Adopt **Resolution No. 10377** approving contract No. 2016-036-COS with Keller Rohrbach, LLP, for the provision of legal services and legal representation related to pursuing remedies for City's purchase of Aluminum Sulfate which may have been the result of bid rigging or other antitrust activity.

Background

The City purchases substantial quantities of a compound known as aluminum sulfate for use in its water treatment process. The City has made past purchases through a procurement process which involved open bidding. City staff has recently learned that certain executives in the industry may have been involved in collusive activity to artificially inflate the cost of aluminum sulfate by Cities and other agencies using the compound for their water facilities. During the relevant time period, the City has purchased over one million dollars of product which may have been higher than it should have been absent collusive activity. In light of recent events, several other Cities around the country have filed an action against industry participants. City staff have conferred with outside counsel and believe that the City of Scottsdale may have viable claims for a refund of overpayments and/or other damages. The City may also be a representative plaintiff for possible class action against the defendants as well.

Due to the expertise possessed by the attorneys in litigating this issue across the country, it is beneficial to the City at this point to also obtain representation by outside counsel with the necessary expertise in this area of the law as well as familiarity with the industry and similar litigation experience elsewhere to assure that City effectively presents its position.

ANALYSIS & ASSESSMENT

Recent Staff Action

Staff from the City Attorney's Office, the Water Department and Purchasing department have conducted the activities necessary to this point in connection with evaluating the litigation.

Policy Implications

The policy of the City Attorney's Office is to handle legal representation in-house except when (a) specialized expertise not available in the Office is required, (b) the Office is precluded from providing representation either because there is a conflict of interest or there is some other reason why it would be detrimental to the City for the case to be retained by the office, or (c) resources beyond those available to the Office are required.

In this instance, the nature of the anticipated litigation and available resources of outside counsel make it appropriate to retain outside counsel for this matter.

Significant Issues to be Addressed

As stated above.

Community Involvement

No community involvement is necessary regarding whether to retain outside counsel.

RESOURCE IMPACTS

Available funding

The City is not required to pay the awardee for providing any legal representation or other legal services. The awardee has offered to provide legal services on a contingency basis of up to 30%. Further, the awardee is not requiring City to reimburse it for any costs. Should the City not prevail, no monies are owed to awardee.

Staffing, Workload Impact

The contract will be administered using existing staff from the City Attorney's Office.

Future Budget Implications

The contract for representation provides that the attorneys will be working on a contingent basis for both fees and costs. Therefore, there should not be negative budget implications but a potential for recovery of fees to the City Treasury.

Cost Recovery Options

None.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt **Resolution No. 10377** approving contract No. 2016-036-COS with Keller Rohrback, LLP, for the provision of legal services.

Proposed Next Steps

City Attorney's Office will execute any subsequent agreements required by retaining this firm.


RESPONSIBLE DEPARTMENT(S)

City Attorney's Office

STAFF CONTACTS (S)

Bruce Washburn, City Attorney, bwashburn@scottsdaleaz.gov

APPROVED BY



Bruce Washburn, City Attorney
(480) 312-2405
bwashburn@scottsdaleaz.gov

2/23/16
Date

ATTACHMENTS

1. Resolution No. 10377
2. Contract no. 2016-036-COS

RESOLUTION NO. 10377

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, APPROVING CONTRACT NO. 2016-036-COS WITH KELLER ROHRBACK, LLP, FOR PROVISION OF LEGAL SERVICES AND LEGAL REPRESENTATION; AUTHORIZING THE CITY ATTORNEY TO EXECUTE AGREEMENTS RELATED TO SUCH CONTRACT

WHEREAS:

A. The City of Scottsdale wishes to obtain outside counsel (legal) services related to pursuing possible legal action including serving as a possible class representative for claims related to antitrust activity in the sale of aluminum sulfate;

B. Keller Rohrbach, LLP is a nationwide legal firm with the experience and expertise necessary to pursue the City's interests in potential litigation.

NOW, THEREFORE, be it resolved by the Council of the City of Scottsdale, Arizona, as follows:

Section 1. The City Council hereby approves contract No. 2016-036-COS with Keller Rohrbach, LLP, for the provision of legal services and legal representation related to pursuing remedies for City's purchase of Aluminum Sulfate which may have been the result of bid rigging or other antitrust activity.

Section 2. The City Attorney is authorized to execute any additional, related agreements required as a result of using contract No. 2016-036-COS.

PASSED AND ADOPTED by the City of Scottsdale, Maricopa County, Arizona this _____ day of March, 2016.

CITY OF SCOTTSDALE,
an Arizona municipal corporation

W. J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY



Bruce Washburn, City Attorney

Attachment # 1

**ATTORNEY ENGAGEMENT AGREEMENT &
CLASS ACTION CONTINGENCY FEE AGREEMENT**

The City of Scottsdale ("CLIENT") retains the firm of KELLER ROHRBACK L.L.P. ("ATTORNEYS") to be CLIENT's attorneys in connection with CLIENT's potential antitrust Claims against General Chemical Corporation, its related and predecessor corporate entities, Frank Reichl, and as-yet unknown co-conspirators ("DEFENDANTS"), arising out of CLIENT's purchases of aluminum sulfate within the United States directly from Defendants between 1997 and such date as a court enters an order certifying a class of similarly situated direct purchasers (hereinafter "Alum Overpayment Claims"). CLIENT agrees to serve as class representative in the litigation to be prosecuted by ATTORNEYS against DEFENDANTS as follows:

1. ATTORNEYS shall undertake and use their best efforts to obtain certification of the plaintiff class to which CLIENT belongs, to achieve a fair and equitable settlement of this case, or to proceed to judgment. In keeping with their duties to the class, ATTORNEYS shall investigate the adequacy of CLIENT to serve as a proposed class representative. **CLIENT is aware that CLIENT may not be appointed by the court to serve as a class representative.**

2. Because it is possible that certification of the class may not be granted, CLIENT is aware that ATTORNEYS may endeavor and agree to individually represent CLIENT and/or other plaintiffs in this litigation. If ATTORNEYS agree to individually represent CLIENT in this litigation, they will confirm their intentions in a separate document. ATTORNEYS, however, will not be obligated to continue representing CLIENT individually in this matter. Specifically, if the lawsuit is not certified as a class action or the court rejects CLIENT as a class representative, ATTORNEYS will, at CLIENT's election, either (a) seek to obtain dismissal of CLIENT's individual claims, if those claims remain pending; or (b) end their representation of CLIENT after making reasonable efforts to assist CLIENT in finding different counsel to represent CLIENT on an individual basis.

3. Unless agreed by ATTORNEYS and CLIENT, or as otherwise required by court rule or as otherwise necessary in ATTORNEYS' judgment to provide adequate representation to the class, the representation of CLIENT or the class under this Agreement excludes the handling of any appeal in the litigation; any class judgment enforcement or collection proceedings; and any retrial of the class action that is ordered after a motion for a new trial or mistrial or after reversal of the judgment on appeal.

4. CLIENT agrees to undertake the duties and obligations of a class representative listed in Exhibit A to this Engagement Agreement.

Attachment #2

ATTORNEY ENGAGEMENT AGREEMENT &
CLASS ACTION CONTINGENCY FEE AGREEMENT

Keller Rohrback LLP
1201 Third Avenue, Suite 3200
Seattle, WA 98101
(206) 623-1900

5. If a monetary recovery is obtained therein for the plaintiff class, either by settlement or judgment, ATTORNEYS will apply to the court for the entirety of their compensation on a reasonable percentage of recovery basis out of such recovery, and/or from DEFENDANTS if allowed by statute and case law. The amount of any fees and costs that ATTORNEYS may receive will be determined by the court based on ATTORNEYS' application for fees and costs.

6. Regardless of the stage at which the litigation is resolved, ATTORNEYS will not seek ATTORNEYS' fees from the court based on a percentage of the recovery higher than thirty percent (30%) of the gross recovery. As used here, the term "gross recovery" includes the recovery of the litigation costs advanced by ATTORNEYS.

7. ATTORNEYS will advance all costs related to the prosecution of the action at their sole expense, and, regardless of the outcome of the action, will not under any circumstances charge or bill CLIENT for any costs. Costs are separate from attorneys' fees, and include costs that are incurred in pursuing litigation, including but not limited to such items as court costs and filing fees; expenses of investigation; deposition and other discovery costs; expert consultations, reports, and witness fees; costs of obtaining and presenting evidence; and travel. If a recovery is obtained in CLIENT's case, ATTORNEYS will ask the court to grant reimbursement of their costs against the defendant or from any recovery obtained on behalf of a class.

8. ATTORNEYS' compensation shall not exceed any limits on compensation imposed by law. The contingent percentage of recovery set forth in this Agreement is not set by law, but is negotiable between ATTORNEYS and CLIENT prior to signing this Agreement.

9. ATTORNEYS shall seek appointment by the Court as class counsel, and agree to undertake the representation of all members of the plaintiff class. ATTORNEYS emphasize class action practice and therefore reserve the right to determine litigation tactics that are in the best interests of all clients and the class. If a difference of opinion arises between CLIENT and ATTORNEYS, on a significant issue, ATTORNEYS shall have the right to proceed with their representation of the class and may also elect to withdraw as CLIENT's counsel of record.

10. CLIENT understands the effect of joint representation on ATTORNEY-CLIENT confidentiality. ATTORNEY-CLIENT communications are privileged and are protected against disclosure to a third party. Under this Agreement, CLIENT may be one among multiple plaintiffs being jointly represented by ATTORNEYS. By entering into this Agreement, CLIENT waives any right CLIENT may have to require that ATTORNEYS disclose to CLIENT any confidences ATTORNEYS have obtained from any other Plaintiff in connection with the subject matter of this Agreement.

11. CLIENT agrees that ATTORNEYS may withdraw from the representation with CLIENT's consent, and without CLIENT's consent for legally permissible reasons in accordance with the applicable rules of professional conduct.

12. Except as required by ATTORNEYS' duties to represent the interests of the class as a whole, and subject to rules of the court regarding withdrawal of counsel from representation, CLIENT may terminate ATTORNEYS' services at any time by written notice. CLIENT understands that court approval may be required to complete ATTORNEYS' withdrawal from pending litigation. CLIENT acknowledges that after discharging ATTORNEYS, ATTORNEYS may continue representing other putative or named class representatives regarding the subject matter of this representation, and ATTORNEYS will retain their rights to recover fees and costs in the class matter(s) upon settlement or judgment of the class action to the extent permitted by law.

13. ATTORNEYS may associate with other attorneys to prosecute the litigation. This association with other attorneys is at no additional expense to CLIENT. If such association occurs, ATTORNEYS will so advise CLIENT and inform CLIENT of agreement among counsel with regard to attorneys' fees or costs.

14. ATTORNEYS maintain errors and omissions insurance coverage applicable to the services to be provided under this Agreement.

15. ATTORNEYS intend to work diligently on CLIENT's behalf and on behalf of the proposed class. However, ATTORNEYS cannot promise success in any adversarial proceedings or other efforts ATTORNEYS undertake. CLIENT acknowledges and understands that ATTORNEYS have not guaranteed or represented any particular result.

16. To secure payment to ATTORNEYS of all sums payable for legal services rendered and/or costs advanced on behalf of CLIENT as a class representative and/or on behalf of the class as a whole, and to the extent permitted by law, CLIENT hereby grants ATTORNEYS a lien on CLIENT's claim(s) as a class representative and any cause of action for the lawsuit filed thereon, and on any recovery CLIENT and/or the class may obtain, whether by settlement, judgment, compromise, or otherwise.

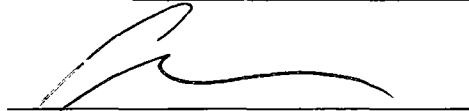
17. Client designates Eric C. Anderson, or his successor, to be the CLIENT's Representative. The CLIENT's Representative is responsible for receiving all communications from ATTORNEYS and transmitting all communications from CLIENT to ATTORNEYS. The CLIENT agrees that ATTORNEYS may rely on the CLIENT's Representative's statements as an accurate reflection of CLIENT's position and desires. ATTORNEYS agree to keep the CLIENT's Representative informed of all significant developments regarding the representation.

18. This Engagement Agreement when signed below by CLIENT replaces any prior understandings or oral agreement between CLIENT and ATTORNEYS.

19. This Engagement Agreement and all aspects of the ATTORNEY-CLIENT relationship shall be construed under the laws of the State of Arizona, without regard to choice of law principles. If any dispute should arise with respect to this engagement, venue shall

lie in Arizona. Further, the prevailing party in such an action shall be awarded reasonable costs and attorneys' fees.

DATED: _____



CLIENT SIGNATURE

Eric C. Anderson
Asst. City Atty

ACCEPTED: Keller Rohrback

By: _____

Dated: _____

EXHIBIT A
Duties and Obligations of a Class Representative

1. In class actions, “class representatives” seek relief for themselves and other similarly situated entities as to their common injuries.

2. A class representative has facts and legal claims that are typical of those of the class, and thus involve common issues of law and of fact.

3. Because class actions involve common issues that affect many people or entities, there are often numerous class actions filed by numerous class representatives regarding the same or similar subject matter. They are sometimes, but not always, consolidated into one larger class action. The court overseeing that consolidated class action may appoint lead class counsel that may be different from the original attorneys bringing a class representative’s case.

4. In non-class litigation, parties asserting claims are free to pursue only their own interests; they need not take into account the interests of others. Class actions are different, and require both class representatives and the lawyers for the class to consider primarily the interests of the class as a whole. This means that you must always act in the best interest of the class as a whole and consider the interests of the class ahead of your own individual or personal interests. If at any time you fail or refuse to prioritize the interests of the class, you will not be able to serve as a class representative, and we will not be able to continue representing you.

5. If a party’s legal claims are unique to it, those unique claims would not be suitable for resolution in a class action. When a party agrees to serve as a class representative, it recognizes that some of its legal rights may be unsuitable for a class action, and therefore, would not be part of any lawsuit. By agreeing to serve in a class action focused on common claims, class representatives might lose the right to bring claims unique to themselves in a future lawsuit.

6. Class representatives recognize that class actions can be unpredictable. For example, the way the class is defined for either litigation or settlement purposes may change over time, and in certain cases, may not even include a proposed class representative.

7. A class representative participates actively in the lawsuit, such as by testifying at deposition and trial, by producing evidence, by answering written questions from the defendant, and by keeping generally aware of the status and progress of the lawsuit.

8. A class representative is not required to be particularly sophisticated or knowledgeable about the lawsuit or to know every aspect of the litigation. However, class representatives must maintain reliable communication with their attorneys throughout the lawsuit, which could take years.

9. A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be designed in the best interests of the class as a whole.

10. If at any time you believe that your interests conflict with those of other class members in regard to the subject matter of the class litigation, you agree to immediately inform us of this concern.

11. Given the nature of class actions and the duties of a class representative, you agree to fully cooperate with and to assist Attorneys. From time to time, we may request records, information and your active participation in the case. You agree to timely comply with our requests. You agree to advise us of all facts, knowledge, or information relevant to our representation, including facts, knowledge, or information that comes to your attention after execution of this engagement letter. You also agree to provide accurate and complete information to us on a timely basis, promptly returning our phone calls and letters, meeting with us, attending depositions or hearings if required, and reviewing and signing legal documents.

I have read and agree with this summary.

DATED: _____

CLIENT SIGNATURE